

STATE OF CALIFORNIA  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

**SMALL DOMESTIC USE REGISTRATION**

CERTIFICATE NO. R765

Application D031768R of    Kathleen A. Orcutt  
                                     David York  
                                     P.O. Box 85  
                                     Whitethorn, CA 95589

filed with the State Water Resources Control Board (State Water Board) on **May 1, 2009** meets the requirements for registration of small domestic use specified in Article 2.7 (commencing with section 1228) of Chapter 1 of Part 2 of Division 2 of the Water Code. The appropriation is subject to the following conditions.

1. Source:

Tributary to:

Mattole River

Pacific Ocean

within the County of **Humboldt**.

2. Location of Point of Diversion: By California Coordinate System of 1983, <b>Zone 1</b>	Point is within (40-acre subdivision)	Section Projected	Township	Range	Base and Meridian
<b>North 1,910,497 feet and East 6,009,457 feet</b>	<b>NE¼ of NW¼</b>	<b>5</b>	<b>5S</b>	<b>2E</b>	<b>H</b>

3. Purpose of Use:	4. Place of Use:	Section Projected	Township	Range	Base and Meridian	Acres
<b>DOMESTIC</b>	<b>NE¼ of NW¼</b>	<b>5</b>	<b>5S</b>	<b>2E</b>	<b>H</b>	

The place of use is shown on a map on file with the State Water Board.

5. Quantity and Season: The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 1,225 gallons per day diverted from October 15 to September 1 of the succeeding year, and 0.3 acre-foot per annum by storage to be collected from November 1 of each year to September 1 of the succeeding year. The capacity of the storage tanks shall not exceed two 50,000 gallon storage tanks which is the stated capacity shown in the registration.

The total amount of water to be taken from the source shall not exceed 1.5 acre-feet per water year of October 1 to September 30.

6. Appropriation of water pursuant to this registration shall be made in accordance with the information set forth in the completed registration form as to source, location of point of diversion, purpose of use, place of use, and quantity and season of diversion. This information is reproduced as conditions 1 through 5 of this certificate.
7. The appropriation registered herein shall be limited to the use of water in houses, resorts, motels, organization camps, campgrounds, and other similar facilities, including the incidental watering of domestic stock for family sustenance or enjoyment, the irrigation of not to exceed one-half acre of lawn, ornamental shrubbery, or gardens at any single establishment, and the human consumption, cooking, and sanitary needs at campgrounds or resorts. Also, any storage of water registered herein may include impoundment for incidental aesthetic, recreational, or fish and wildlife purposes.
8. This appropriation is limited to the season of diversion specified in condition 5 herein. If such specified season is less than the actual season of need, an alternative supply of water, or other valid right, shall be utilized for all uses outside of the season registered herein.
9. Pursuant to California Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this registration, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.
10. Registrant shall allow representatives of the State Water Board, and other parties as may be authorized from time to time by the State Water Board, reasonable access to project works to determine compliance with the terms and conditions of this registration.
11. This appropriation is subject to prior rights. Registrant may be required to curtail diversion or release water stored during the most recent collection season should diversion under this registration result in injury to holders of legal downstream senior rights. If a reservoir is involved, registrant may be required to bypass or release water through, over, or around the dam. If release of stored water would not effectively satisfy downstream prior storage rights, registrant may be required to otherwise compensate the holders of such rights for injury caused.

12. If the registrant does not own the point of diversion, this registration shall not be construed as conferring upon the registrant right of access to the point of diversion.
13. To the extent that water available for use under this registration is return flow, imported water, or wastewater, this registration shall not be construed, as giving any assurance that such supply will continue.
14. Diversion works shall be constructed and water applied to beneficial use with due diligence.
15. No work shall commence and no water shall be diverted, stored or used under this certificate until registrant has received a stream or lake alteration permit from the California Department of Fish and Game. Compliance with the terms and conditions of the permit is the responsibility of the registrant. If a permit is not necessary for this project, the registrant should retain a written waiver from the California Department of Fish and Game.
16. In compliance with section 5937 of the Fish and Game Code, if storage or diversion of water under this registration is by means of a dam, registrant shall allow sufficient water at all times to pass through a fishway or, in the absence of a fishway, allow sufficient water to pass over, around, or through the dam to keep in good condition any fish that may be planted or exist below the dam; provided that, during a period of low flow in the stream, upon approval of the California Department of Fish and Game, this requirement will be satisfied if sufficient water is passed through a culvert, waste gate, or over or around the dam to keep in good condition any fish that may be planted or exist below the dam if it is impracticable or detrimental to pass the water through a fishway. In the case of a reservoir, this provision shall not require the passage or release of water at a greater rate than the unimpaired natural inflow into the reservoir.
17. The facilities for diversion under this registration shall include satisfactory means of measuring and bypassing sufficient water to satisfy downstream prior rights and any requirements of the California Department of Fish and Game.
18. No construction shall be commenced and no water shall be diverted under this registration until all necessary federal, state, and local approvals have been obtained, including obtaining and complying with any waste discharge requirements from the appropriate California Regional Water Quality Control Board.
19. This registration does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this water right, the registrant shall obtain authorization for an incidental take prior to construction or operation of the project. Registrant shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this registration.

20. This registration is subject to the submittal of a report of water use and satisfactory renewal of the registration, on forms to be furnished by the State Water Board, including payment of the then-current renewal fees prior to the expiration of each five-year period following the date of first filing the completed registration.
21. The point or points of diversion and the place of use registered herein may be changed by filing a completed amended registration form with the State Water Board, including payment of the then-current registration fee. Such change shall not operate to the injury of any legal user of the water involved.
22. The appropriation registered herein shall be totally or partially forfeited for nonuse if the diversion is abandoned or if all or any part of the diversion is not beneficially used for a continuous period of five years.
23. The appropriation registered herein is subject to enforcement, including but not limited to revocation, by the State Water Board if 1) the State Water Board finds that the registrant knowingly made any false statement, or knowingly concealed any material fact, in the registration; 2) the registration is not renewed as required by the conditions of this certificate; or 3) the State Water Board finds that the registrant is in violation of the conditions of this registration.

Dated: **MAY 28 2009**

**STATE WATER RESOURCES CONTROL BOARD**

  
Victoria A. Whitney  
Division Chief



State of California - The Resources Agency

DEPARTMENT OF FISH AND GAME

<http://www.dfg.ca.gov>

NORTHERN REGION  
601 Locust Street  
Redding, CA 96001  
(530) 225-2300

KDM/KJW KDM/STW  
ARNOLD SCHWARZENEGGER, Governor



SEP 18 PM 12:48

September 16, 2008

Ms. Kathleen Orcutt and Mr. David York  
Post Office Box 85  
590 Shelter Cove Road  
Whitethorn, CA 95589

Dear Ms. Orcutt and Mr. York:

**Registration of a Small Domestic Use Appropriation  
By Ms. Orcutt and Mr. York from the Mattole River,  
Tributary to the Pacific Ocean, Whitethorn, Humboldt County**

The Department of Fish and Game (DFG) has received your State Water Resources Control Board (SWRCB) registration application dated July 30, 2008, for a Small Domestic Use Appropriation (SDU). DFG Staff Environmental Scientist Jane Arnold has reviewed the application and visited the site on July 24, 2008.

Registration of water use, pursuant to the Water Code §1228.3, requires consultation with DFG and compliance with conditions required by the DFG. DFG reviews the appropriation of water to ensure fish and wildlife resources are protected. Your application has been reviewed and conditioned as a participant in the Sanctuary Forest *Tanks and Forbearance Program*.

The Sanctuary Forest *Tanks and Forbearance Program* is based on the principle of storing winter water for summer use. The participating Applicants operate existing diversions under existing water rights including riparian, small domestic registrations and/or appropriative rights. Under the *Tanks and Forbearance Program*, the Applicants shall forbear or reduce the exercise of their water rights during the dry season, and will utilize a storage system that is designed to meet their dry season water demands. Each participating Applicants enters a 15-year agreement with Sanctuary Forest and is legally bound by all restrictions in the agreement for 15 years.

The Mattole River supports populations of coho salmon (*Oncorhynchus kisutch*), Chinook salmon (*Oncorhynchus tshawytscha*), steelhead (*O. mykiss*), and other fish and wildlife resources. The National Marine Fisheries Service (NMFS) listed coho salmon, Chinook salmon and steelhead trout as "threatened" pursuant to the federal Endangered Species Act. DFG has listed coho salmon as "threatened" pursuant to the California Endangered Species Act.

*Conserving California's Wildlife Since 1870*



The diversions to fill the storage facilities during the winter and spring months shall be made pursuant to SDU Appropriation Registrations filed with the SWRCB. The terms and conditions proposed below shall be incorporated in the SDU Appropriation Registrations and shall continue to be in effect for so long as the SDU Appropriation Registration is exercised, even after the 15-year agreement with Sanctuary Forest has been concluded. The terms and conditions are subject to revision by the DFG upon renewal of the SDU Appropriation Registration if assessment of the Mattole River headwaters streamflow monitoring data indicates that fish are not being maintained in good condition by the restrictions specified in the terms and conditions. The SDU Appropriation Registrations allow the Applicants to store water for longer than 30 days.

DFG recommends the following conditions be added to your SDU Appropriation Registration to avoid significant adverse environmental impacts and take of listed aquatic species:

- 1) Seasonal Restriction: No pumping is allowed when streamflows\* drop below 0.7 cubic feet per second (cfs) except as permitted by Sanctuary Forest and DFG in the event of emergency.
- 2) Bypass Flows: Pumping withdrawal rates shall not exceed 5% of streamflow. If DFG determines that the Mattole River headwaters streamflow monitoring data indicate that fisheries are not adequately protected at 95% bypass flow, then the bypass flows are subject to revision by DFG.
- 3) Cumulative Impacts: For the duration of the 15-year agreement with Sanctuary Forest, Sanctuary Forest shall assign pumping days to participating Applicants when streamflows drop below 1.0 cfs to prevent cumulative impacts from multiple pumps operating simultaneously. The Applicants shall comply with an assignment system under the *Tanks and Forbearance* program developed by Sanctuary Forest for the Applicants to follow with pumping day restrictions that shall continue to be in effect for so long as the SDU Appropriation Registration is exercised, even after the 15-year agreement has been concluded.
- 4) Pump intake screens: Pump intake screens shall comply with the "2000 California Department of Fish and Game Screening Criteria"\*\*\* for California streams that provide habitat for juvenile coho salmon, Chinook salmon, and steelhead. The Applicants shall be responsible for inspection and maintenance of screens. The Applicants shall be responsible for cleaning screens as needed to keep them free of debris and ensure that screen function complies with the criteria specifications.

\*Streamflow refers to flows measured in the Mattole River mainstem approximately 30 yards upstream of the Bridge Creek confluence.

\*\* Fish Screening Criteria are from "State of California Resources Agency Department of Fish and Game Fish Screening Criteria, June 19, 2000." The "approach velocity" shall be calculated according to Section 2C "Screens which are not Self Cleaning." These screening criteria are available at <http://iep.water.ca.gov/cvffrt/DFGCriteria2.htm>.

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- 5) These conditions do not authorize incidental take of any species, removal of riparian vegetation, or bed, bank or channel alteration.
- 6) Sanctuary Forest and/or DFG shall be granted access to inspect the pump system. Access is limited to the portion of the Applicant's real property where the pump is located and those additional portions of the real property that must be traversed to gain access to the pump site. Applicants shall be given reasonable notice and any necessary arrangements will be made prior to requested access including a mutually-agreed-upon time and date. Notice may be given by mail or by telephone with the Applicants or an authorized representative of the Applicant. The Applicants shall agree to cooperate in good faith to accommodate Sanctuary Forest and/or DFG access.

The Applicants should be advised that a lake and streambed alteration agreement (LSAA) is required to substantially divert water from a stream pursuant to Fish and Game Code §1602. This water diversion appears to be substantial and as such, the Applicants are required to notify DFG to obtain an LSAA to divert water. The process for notifying DFG to obtain an LSAA will be administered through the DFG Office in Eureka and can be initiated by contacting Office Technician Laurie Harnsberger at (707) 441-2075. Further information on and the forms for this process are available on the DFG website at <http://www.dfg.ca.gov/habcon/1600>.

We appreciate your efforts to pursue this innovative solution to improve critical rearing habitat for anadromous fish in the headwaters of the Mattole River. If you have questions regarding these conditions, please contact Ms. Arnold at (707) 441-5671.

Sincerely,



**GARY B. STACEY**  
Regional Manager

cc: See Page Four

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cc: Ms. Victoria Whitney, Chief  
Attention: Ms. Susan Wilson  
State Water Resources Control Board  
Division of Water Rights  
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Sacramento, CA 95812-2000

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